

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18026
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On February 26, 2004, the staff of the Income Tax Audit Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Petitioner) and the Petitioner's spouse, proposing income tax, penalty, and interest for the 2000 and 2001 taxable years in the total amount of \$46,789.

On April 24, 2004, the Petitioner filed a timely protest and request for redetermination. The Petitioner also requested an informal conference with a Commissioner or a designee of the Commissioner to discuss the Notice of Deficiency Determination. The Tax Commission conducted a telephone conference on July 21, 2004, and a follow-up telephone conference on September 10, 2004. The Petitioner participated in both telephone conferences.

The Tax Commission has reviewed the entire file in this matter, including the written information submitted by the Petitioner. The Tax Commission also has considered the discussions that took place during the telephone conferences. The Tax Commission now issues its decision. As discussed below, the Tax Commission upholds the Notice of Deficiency Determination the Income Tax Audit Division issued and finds that the Petitioner is responsible for the tax deficiency (less payments made by the Petitioner's ex-spouse) set forth in the Notice.

This is a domicile case. The Petitioner and her spouse filed federal and Idaho income tax returns for the taxable years under review as well as the taxable year 2002. They filed joint returns as a married couple for the years 2000 and 2001. On the Idaho returns, the couple

reported that the Petitioner was an Idaho resident. They also reported and paid income tax on the Petitioner's income.

In contrast, the Petitioner's spouse filed as a nonresident of Idaho and reported that he was a resident of [Redacted]. As a result, the couple did not report his income to Idaho or pay Idaho tax on his income.

The Tax Commission's audit staff reviewed the tax returns filed by the Petitioner and her spouse. The staff then conducted an examination to verify the residency status of the Petitioner's spouse. The audit staff determined that the couple previously filed joint Idaho income tax returns as a married couple and that the Petitioner and her spouse previously resided together in [Redacted], Idaho. The Petitioner and her spouse separated in 1999. During the separation, the Petitioner's spouse rented an apartment in [Redacted] and apparently based his business operations in [Redacted]. Based on these facts, the couple asserted the Petitioner's spouse had changed his residency to [Redacted] for the taxable years.

Under Idaho's income tax laws, a resident of this state is required to report and pay income tax on all his or her taxable income regardless of source. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. For taxable years beginning on or after January 1, 1996, the term "resident" is defined as "any individual who: (a) Is domiciled in the state of Idaho for the entire taxable year; [or] (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state." Idaho Code § 63-3013 (1996).

There is no indication that the Petitioner's spouse maintained a place of abode in Idaho during the entire 2000 or 2001 taxable years or that he spent more than 270 days within Idaho

during 2000 or 2001. Therefore the issue the audit staff addressed, and the primary issue that is reviewed in this decision, is whether the Petitioner's spouse changed his domicile from Idaho to [Redacted] during the years in question.

The audit staff determined that the Petitioner's spouse did not change his domicile from Idaho to [Redacted] during the taxable years 2000 and 2001 and therefore assessed a tax deficiency regarding the spouse's income that the couple had not reported or paid tax upon. However, the staff determined the Petitioner's spouse did change his domicile to [Redacted] in the taxable year 2002 and therefore did not assess additional tax for that year.

Domicile is defined in the Tax Commission's Income Tax Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent." Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.02 (1999). The term "domicile" denotes the place where an individual has the intention to remain permanently or for an indefinite time. While an individual can have several residences, he can legally only have one domicile at a time. Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 59, 524 P.2d 176, 187 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are: (1) the intent to abandon the present domicile; (2) the intent to acquire a new domicile; and (3) physical presence in the new domicile. See Idaho Income Tax Administrative Rule 030.02.a, IDAPA 35.01.01.030.02.a (1999).

The determination of domicile depends upon no one specific fact or combination of circumstances but upon all the evidence as a whole showing a preponderance in favor of some particular place as the person's domicile. Hall v. Wake County Bd. of Elections, 187 S.E.2d 52, 57 (N.C. 1972); Fry v. Fry, 76 N.E.2d 225, 229 (Ill. App. 1947). Therefore, the Tax Commission

must look at all the available facts and circumstances to determine a taxpayer's domicile. In addition, since a taxpayer's subjective intent is difficult to gauge, actions are oftentimes accorded more weight in domicile decisions than conclusory declarations, since declarations can tend to be self-serving. See, e.g., Allen v. Greyhound Lines, Inc., 583 P.2d 613, 614 (Utah 1978); Baker v. Wisc. Dept. of Taxation, 18 N.W.2d 331, 334 (Wis. 1945). Simply put, in a domicile case, the taxpayer's actions often speak louder than words.

The burden of proof for establishing a change in domicile rests on the party asserting the change. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). In addition, the party asserting the change in domicile must establish by clear and convincing evidence that the change actually occurred. Bodfish v. Gallman, 50 A.D.2d 457, 458, 378 N.Y.S. 2d 138, 140, (N.Y.App.Div. 1976); Baker v. Wisc. Dept. of Taxation, supra.

In those cases where an individual maintains a residence in more than one state, determining which state is that person's one true and fixed permanent home can be quite difficult. As indicated above, the determination of domicile depends upon no one fact or combination of circumstances but upon the record as a whole. While all relevant circumstances may be considered, the Tax Commission's Income Tax Audit Division has recently developed some domicile audit guidelines that are particularly germane in making a domicile determination where the taxpayer has a physical residence in more than one state. Under these audit guidelines, five factors are looked at as the primary indicia of domicile. The five primary factors are: (1) home; (2) family connection; (3) employment and active business involvement; (4) time spent at each location; and (5) location of "near and dear" items. Other facts and circumstances may also be considered, but it is the five primary factors that are generally accorded the most weight.

The “home” factor requires a comparison of the size, value, and nature of use of the various residences maintained by the taxpayer in order to determine which residence is considered the taxpayer’s primary home. In addition, whether the taxpayer has claimed his Idaho home as his “primary dwelling” for purposes of the Idaho homeowner’s property tax exemption is given a great deal of weight in determining which of the residences is the taxpayers primary home.

During the taxable years of 2000 and 2001, Petitioner and her spouse owned a home in Coeur d’Alene, [Redacted]

A comparison of the size and value of the two abodes leads to the conclusion that the [Redacted] residence was the spouse’s primary home. The use and payment schedule of the apartment also suggests a temporary or transitory nature rather than a permanent abode. In the same vein, the Commission notes the Petitioner stated that during 2000 and 2001, the couple remained committed to reconciliation. The audit staff received statements from the couple that the Petitioner’s spouse regularly returned to Idaho when not working and that he spent nearly every major holiday during 2000 and 2001 in Idaho with the Petitioner. This pattern persisted until their efforts to reconcile ultimately proved unsuccessful, and the Petitioner filed for divorce at the end of the 2001 taxable year. After the divorce became final in 2002, the Petitioner’s spouse abandoned the rented apartment and purchased a condominium in Nevada.

It also is significant that the couple claimed a joint homeowner’s exemption on the Idaho home for Idaho property tax purposes. Married couples with split domiciles are required to claim only one-half of the exemption.

Absent additional evidence, the Tax Commission is persuaded that the comparative size and value of the [Redacted] home versus the [Redacted] points to Idaho as the “home” of the Petitioner’s spouse during the years at issue.

The second of the five primary domicile factors is family connection. All else being equal, one would expect to make his domicile at the place where he has the strongest family connection. The location of one’s spouse and minor children are particularly relevant indicators of domicile. In the present case, the Petitioner and her spouse, so far as the record before the Commission reveals, have no minor children.

The strongest family tie the spouse had during 2000 and 2001 is with the Petitioner. The Commission finds the statements of the Petitioner and her spouse to be compelling. As noted above, the spouse returned to Idaho often. According to the Petitioner, the couple attempted to reconcile during this time. Thus, the “family connection” factor also strongly points to Idaho as the spouse’s state of domicile.

The third of the domicile factors, the employment and active business involvement factor, is less clear. The Petitioner’s spouse works with [Redacted]. He travels throughout several western states in the course of his employment. Beginning with the couple’s separation in 1999, it appears that he continued to travel but based his business operations primarily in [Redacted], Nevada.

The spouse stated he set up a base of operations in [Redacted] to establish new clients. The spouse perceived that a new and undeveloped market existed in Nevada. However, he believed that clients could not be reached effectively by long-distance solicitation. Therefore it was necessary for him to establish a physical presence in the immediate area to develop the new client base. [Redacted] agreed and instructed him to pursue new clients in this area. Thus, in

some sense, the Petitioner's spouse was required to establish business operations in Nevada out of necessity rather than springing from a voluntary or overall intent to change domicile.

The Tax Commission has noted in other domicile cases that an abode located in another state is not necessarily a taxpayer's domicile. It may simply be a place where income is derived. Moreover, as discussed below, it seems that the Petitioner's spouse spent a considerable amount of time in states other than Idaho and Nevada in the pursuit of business. He located operations in Nevada to establish a new market base but also continued business activities in other states. Consequently, the Tax Commission finds the employment and active business involvement factor points to Nevada as the spouse's place of domicile but tempers this finding against the apparent necessity for the Nevada base.

The fourth of the five primary domicile factors is the amount of time spent in each state. As with the previous factor, the facts presented to the Commission do not provide a clear answer. The Petitioner's spouse produced documentation showing he spent time in Washington, Texas, Arizona and California during the course of his employment. In addition, the Petitioner's spouse stated he spent about eight days a month working in the [Redacted], Washington office of [Redacted]. However, the time he spent in these states cannot be factored in the Tax Commission's decision because the spouse did not have a home in these states.

The Tax Commission asked for documentation of the number of days the spouse spent in Nevada, but neither the Petitioner nor the Petitioner's spouse provided such documentation. Given the lack of documentation, the Tax Commission simply cannot draw any probative conclusions concerning this factor.

The final primary factor is the location of one's "near and dear" items. Near and dear items are things such as pets, photographs, family heirlooms, artwork, and other personal effects

of a high sentimental value or that typically enhance or add to the quality of life. All else being equal, one would expect to keep such highly sentimental tangible objects at the place they most customarily associate as their true home and principal establishment.

The Petitioner alluded to the fact that her spouse kept his personal airplane at a hangar he owned in Nevada and that he maintained the plane in Nevada. Although requested, flight logs showing where the airplane was actually located during 2000 and 2001 were not provided to the Tax Commission.

The audit staff discovered that in addition to the Nevada hangar, the Petitioner's spouse also had a hangar at the [Redacted] Airport. The staff further discovered that while the couple were separated, the Petitioner's spouse retained the following items in Idaho: a 1987 Prowler Travel trailer; a military desk located in the bedroom of the couple's [Redacted] home; a Welcome Home elk hanging in the [Redacted] home; a 13-inch television in the Idaho cabin; an antique dresser in the [Redacted] home; and several personal vehicles registered in Idaho. The Commission finds that these items remaining in Idaho points to Idaho as the spouse's domicile.

Weighing the five primary factors, the Commission finds that the evidence supports the Audit Division's findings that the Petitioner's spouse was domiciled in Idaho and was required to report and pay Idaho income taxes on the income he received during the taxable years.

The Petitioner has not produced documentation or information that would show that her spouse was domiciled somewhere other than in Idaho during the years in question. Instead, the Petitioner asserts that her spouse and their accountant told her it would be beneficial to file joint tax returns and that she had no occasion or reason to question whether her spouse would be considered a nonresident for income tax purposes. The Petitioner further believes that, in filing the joint returns, she has already reported "her income" and paid tax on that income. She asserts

that she has, in effect, filed separately, reported her separate income and paid “her share” of the tax due on that income. Based on these circumstances, the Petitioner believes she should be relieved from joint liability for the tax deficiency under the “Innocent Spouse Provisions” of the Internal Revenue Code.

The Petitioner errs in these contentions for two reasons. First, Idaho has not adopted the “Innocent Spouse Provisions” set forth in sections 6015, et seq. of the Internal Revenue Code. Rather the relevant code section of Idaho tax law, Idaho Code § 63-3031(b)(3) states that if a joint return is filed the tax shall be computed on the aggregate income and the liability with respect to the tax shall be a joint and several liability. Under the Idaho statutes, the Petitioner is responsible for the entire amount of tax due for 2000 and 2001.

Second, and perhaps more significant, the Petitioner has not paid “her share.” Under the community property laws of Idaho, income earned by spouses becomes community property. Idaho Code § 32-906. The earnings of a husband, following separation and up to the date of divorce, must be included as community property. Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). In Idaho, the interest of the wife in wages, salary and other community property is a present vested interest, equal in degree, nature and extent to that of the husband. Hansen v. Blevins, 84 Idaho 49, 367 P.2d 758 (1962). Thus, because the income received by the Petitioner’s spouse was community property, the Petitioner had an immediately vested interest in and right to one-half of the income, just as he had a right to one-half of the income the Petitioner received. With the right to exercise control over the income comes the duty to pay tax on the income. Therefore, even had the Petitioner elected to file separately, under the community property laws of Idaho, she would have been required to pay tax on one-

half of her income and one-half of her spouse's income. The attendant deductions and exemptions also would have been split between the spouses.

The application of the community property rules seems fitting under the circumstances presented in this case. While the spouses have equal control over community property, either spouse has the power to encumber more than their half of the community property; that power imposes a solemn duty of a fiduciary which continues until the moment of the marriage's dissolution. Compton v. Compton, 101 Idaho 328, 612 P.2d 1175 (1980). The Petitioner's spouse did not exercise exclusive control over the income he received; but rather, as the Petitioner acknowledged during the telephone conferences, her "ex-spouse's" income helped to pay the mortgage on the home in Idaho as well as taxes and various other community expenses during the time the couple was separated from one another.

CONCLUSION

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the Petitioner to show that the tax deficiency is erroneous. Id. For the foregoing reasons, the Tax Commission finds that the Petitioner failed to meet the burden in this case.

WHEREFORE, the Notice of Deficiency Determination dated February 26, 2004, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$ 20,990	\$ - 0 -	\$ 4,938	\$ 25,928
2001	<u>\$ 19,424</u>	<u>\$ - 0 -</u>	<u>\$ 3,077</u>	<u>\$ 22,501</u>
Subtotal	\$ 40,414	\$ - 0 -	\$ 8,015	\$ 48,429
Less payment from spouse:				(\$ 24,248)
TOTAL AMOUNT DUE:				<u>\$ 24,181</u>

Interest is calculated through December 31, 2004.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision. As set forth in the enclosed explanation, the Petitioner must deposit with the Tax Commission twenty percent (20%) of the total amount due in order to appeal this decision. The twenty percent deposit in this case amounts to \$ 4,836 and will be held as security for the payment of taxes until the appeal is finally resolved.

DATED this _____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt
